IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4471 OF 2007

Keshavji Naik Chawls (Haji Ismail Haji Habib Chaity Tust)..... Petitioner.
V/s
Ismail Haji Ahmed Nakhuda & 12 Ors..... .... Respondents.

Mr.P.K.Dhakephalkar, Sr. Adv. With M.V.Limaye, Adv. For the petitioner.

Mr.Y.H.Muchhala with Mr.Sageer Khan for respondent Nos. 1 to 6.

Mr.Shyam Lilani i/by Mr.Lilani Shah & Co. for respondent No.7.

Mr.B.D.Joshi i/by Mrs.Varsha Palav, Adv. For respondent No.8.

CORAM: A.P.DESHPANDE, J.
19/7/07

PC:

The present petitioner is tenants' association residing in a chawl known as Keshavji Naik Chawl which property is owned by a public trust by name Haji Ismail Haji Habib Charitable Trust bearing Public Trust Registration No.B-161, (Mumbai). The said chawl is the subject matter of this writ petition. The members of the petitioner-association are tenants of the Trust residing in the said chawl. The Trust issued a public notice in daily newspapers and invited offers from interested parties with a view to sale the chawl. In response to the notice it received three offers, one from Mahendra Vora for Rs.5 lacs, M/s.Mighty Engineers offered to pay Rs.31 lacs and the last offer was received after the stipulated time and hence was not considered. The Trustees called upon the two interested parties to raise their offer. Mahendra Vora offered Rs.54 lacs whereas Mighty Engineers enhanced their initial offer of Rs.31 lacs to Rs.54.5 lacs. The offer of Mighty Engineers being the

highest was accepted by the Trust in the meeting of Board of Trustees held on 13.1.03 and pursuant to the said acceptance of the offer of Mighty Engineers, an application came to be filed under section 36(1)(a) of the Bombay Public Trust Act. During the pendency of the proceedings the present petitioner filed an application with a view to intervene in the matter as it was interested in purchasing the property. The application was allowed. Thus, before the Charity Commissioner three parties have shown their desire to purchase the property i.e. Mighty Engineers, Mahendra Vora and Tenants' Association-the petitioner. On 4.5.07 the Tenants' Association as well as Mahendra Vora showed their intention to enhance their offers and hence Mighty Engineers was also called and they too expressed their readiness to put forth enhanced offer afresh. The three parties were directed to submit their final highest offers in sealed envelope on or before 10.5.07. On 10.5.07 one more party appeared and submitted its offer in the sealed envelope. All the four envelopes were opened with a view to find out the highest offer and the same had come from Tenants' Association which was for Rs.3. Crores. The matter was then adjourned to 11.5.07 on which date M/s.Mighty Engineers through the Trust tendered a letter whereby it had enhanced its offer to 3.51 crores. In the back drop of these facts the Joint Charity Commissioner came to the conclusion that the property in question definitely has more hidden price and thus took a decision to take up bidding process afresh with a view to fetch fair market price. He has also recorded finding that the property is capable of fetching more price. It is this order which is challenged by the Tenants' Association. Learned senior advocate appearing for the petitioner submits that the Joint Charity Commissioner need to take into consideration the fact that the petitioners' Association is Tenants' Association and the tenants are residing in the chawl in question and bearing in mind this fact the Joint

Charity Commissioner should take appropriate decision directing sale of property to the present petitioner. Learned counsel appearing for the respondents opposed the said contention by submitting that the petitioner cannot claim any preferential right being a Association of Tenants and the petitioner need to bid with others in the bidding process. The submission is that the Joint Charity Commissioner has to bear in mind only one factor and that is interest of the Trust. Interest of tenants cannot be permitted to be considered by the authority when the property of the Trust is being sold.

2. Perused the impugned order. I am of the clear view that while considering the application under section 36 of the Bombay Public Trust Act, the Charity Commissioner has to consider the interest of the Trust so that the Trust fetches maximum benefit from the sale of the property. No ther consideration such as one canvassed by the petitioner can be taken into account as the same is bound to run counter to the interest of the Trust. Thus the submission advanced by the learned counsel for the petitioner cannot be accepted. I do not find merit in the writ petition and the same deserves to be dismissed. The impugned order passed by the Joint Charity Commissioner does not call for any interference as the endeavor of the authority is to fetch a fair market price for the property. However before I conclude it need to be observed that in an endeavor to fetch higher price the bidding process cannot be deferred over years as appears to have happened in the present case. The application is pending fro quite some time. While trying to fetch a fair market price it should not be lost sight that the process cannot be unending but must reach its finality. On account of lapse of time the prices are bound to increase. The application seems to be pending for about four years and thus I deem it appropriate to state that the bidding process which the Joint Charity Commissioner proposes to take up should be a final

attempt and no further attempts be made under an assumption that yet the highest offer has not been received. I am of the view that the authority must try to ensure finality to the bidding process when it take up the bidding process hereafter as observed by it in its order dated 11.5.07. With these observations writ petition is summarily dismissed.

19.7.07